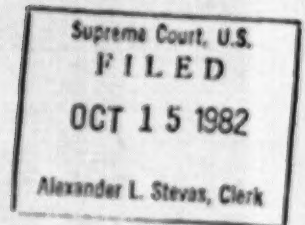




NO. 82-5630

IN THE SUPREME COURT OF
THE UNITED STATES



OCTOBER TERM, 1983

RICHARD DWAYNE TAYLOR, APPELLANT

V.

THE STATE OF TEXAS, RESPONDENT

ON APPEAL FROM THE TEXAS COURT OF CRIMINAL APPEALS

JURISDICTIONAL STATEMENT - STATE CRIMINAL CASE

S. PRICE SMITH, JR.
Attorney for Appellant
State Bar No. 18753500
210 Executive Building
Wichita Falls, Texas 76301
(817) 766-1700

QUESTIONS PRESENTED

Did the Court of Appeals err in holding Art. 30.02(d)(3), Tex. Penal Code Ann., constitutional by finding that the words "injures" or attempts to injure" were not so vague and ambiguous as to violate the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States of America?

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CITATION TO OPINION BELOW

The majority of the opinions of the Court of Appeals is not officially reported but is annexed as Appendix A. The order of the Texas Court of Criminal Appeals is not reported. The order overruling the Petition for Discretionary Review is annexed as Appendix B. Appellant's Notice of Appeal is annexed as Appendix C.

STATEMENT OF JURISDICTION

In affirming Appellant's conviction, the Texas Court of Appeals sustained the constitutionality of Art. 30.02(d)(3), Tex. Penal Code Ann., which provides as follows:

"A person commits an offense, if, without the effective consent of the owner, he: enters a building not then open to the public with intent to commit a felony or theft. (d) An offense under this section is a felony of the first degree if: (3) any party to the offense injures or attempts to injure anyone effecting entry or while in the building or in immediate flight from the building.

The jurisdiction of this Court is conferred by Title 28, U. S. Code §1257(2).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Fourteenth Amendment,
Due Process Clause.

STATUTORY PROVISIONS INVOLVED

Art. 30.02(d)(3), Tex. Penal Code Ann.

A person commits an offense if, without the effective consent of the owner, he: enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony or theft. (d) An offense under this section is a felony of the first degree if: (3) any party to the offense injures or attempts to injure anyone in effecting entry or while in the building or in immediate flight from the building.

STATEMENT OF THE CASE

This is an appeal from the 78th Judicial District Court, Wichita County, Texas, Honorable Stanley C. Kirk presiding. Richard Dwayne Taylor went to trial on the charge of burglary and while in the building, the said Richard Dwayne Taylor did injure the said Ronnie Hale by stabbing him with a sharp instrument, to-wit: one blade of a pair of scissors, alleged to have been committed on the 10th day of December, 1977. Richard Dwayne Taylor was convicted of an offense on October 18, 1978, and was sentenced on December 13, 1978, to life imprisonment in the Texas Department of Corrections and thereupon gave his notice of appeal to the Court of Criminal Appeals of the State of Texas. The case was subsequently transferred to the Court of Appeals, Second Supreme Judicial District. The Court of Appeals, Second Supreme Judicial District, by an opinion rendered on April 28, 1982, affirmed Appellant's conviction. The Petition for Discretionary Review was filed with the Texas Court of Criminal Appeals and was overruled on July 21, 1982.

The Appellant in this cause was charged by a grand jury indictment, which reads in pertinent part as follows:

"That Richard Dwayne Taylor, on or about the 10th day of December, A.D., 1977, and anterior to the presentment of this indictment, in the County of Wichita and State of Texas, did then and there, with intent to commit theft, enter a building which was not then open to the public, without the effective consent of Ronnie Hale, the owner, and while in the building the said Richard Dwayne Taylor did injure the said Ronnie Hale by stabbing him with a sharp instrument, to-wit: one blade of a pair of scissors."

The term "injure" is not defined anywhere in the Penal Code. However, Art. 1.01(a)(7) does define "bodily injury" and Art. 1.07(a)(34) defines "serious bodily injury." These two definitions are quite different. It is not clear whether the injury spoken of in Art. 30.02(d)(3), Tex. Penal Code Ann., is bodily injury or serious bodily injury or some other form of injury or a combination.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

I.

This case presents the important question of whether a person can be charged with an offense of burglary of a building and then have their punishment enhanced to a first degree felony, which exposes a person to life imprisonment, under a provision of the Texas Penal Code which is vague and indefinite, in violation of the Constitution of the United States of America, Fourteenth Amendment, Due Process Clause.

The issue presented to the Texas Court of Appeals was whether or not Art. 30.02(d)(3), Tex. Penal Code Ann. (1979), is void for vagueness. The offense of burglary under the Texas Penal Code is generally punishable as a second degree felony. However, subsection (d) of Art. 30.02 provides three sets of exceptional circumstances which, if proven, elevate the offense to one punishable as a first degree felony. The third of the three exceptions provides that the offense is punishable as a first degree felony if: "any party to the offense injures or attempts to injure anyone in effecting entry or while in the

building or in immediate flight from the building." The term "injure" is not defined anywhere in the Penal Code.

The Court of Appeals addressed this point of error at page three of their opinion. What the Court of Appeals was doing with this opinion is rewriting the statute to change the word "injure" as it appears in the statute to "physical injury." Thus, by a construction, the Court of Appeals is seeking to change the terms of the statute and, in effect, amend it. In addition, it must be recognized that even the term "physical injury" is not defined in the Penal Code, either. Does this mean bodily injury or serious bodily injury. The opinion of the Court of Appeals does not resolve the dilemma. The opinion of the Court of Appeals still leaves the statute unconstitutionally vague even with their interpretation.

It is well settled that appellate courts may not, under the guise of construction, amend the statute by adding provisions thereto, no matter how desirable those additions might seem to the judge. AM Servicing Corp. of Dallas v. State, 380 S.W.2d 74 (Tex.Civ.App.-Dallas 1964). It is for the legislature, not the courts, to remedy defects or supply deficiencies in the law. Sparks v. State, 174 S.W. 351 (Tex.Crim.App. 1915). In United States v. Reese, 92 U.S. 214 (1876), the Supreme Court of the United States held:

"The question, then, to be determined is, whether we can introduce words of limitation into a penal statute so as to make it specific, when, as expressed, it is general only. It would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders and leave it to the courts to step inside and say who could be rightfully detained and who would be set at large."

It has also been repeatedly held in Texas that the courts cannot supply words, interpolate words, add or eliminate provisions, or enlarge, extend, or restrict the scope of a law. 53 Tex.Jur. 2d, Statutes §124 at p. 179. Baylor v. State,

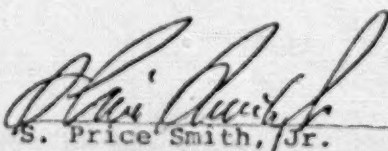
208 S.W.2d 558 (Tex.Crim.App. 1948); In Re Lebonson, 274 S.W.2d 76 (Tex.Crim.App. 1955); All Texas Racing Association v. State, 82 S.W.2d 151 (Tex.Crim.App. 1935).

It is your Appellant's position that the statute under which he was prosecuted is void for vagueness. As stated by the United States Supreme Court: "The vice of vagueness in criminal statutes is the treachery they conceal in determining what persons are included or what acts are prohibited." U.S. v. Cardiff, 344 U.S. 174 (1952). Art. 30.02(d)(3), Tex. Penal Code Ann., should be held by this Honorable United States Supreme Court unconstitutional in that it is void for vagueness because the term "injure" as used in the statute under examination is a term of at least double meaning, and perhaps no meaning at all. This Honorable Court, nor the Court of Appeals, nor the trial court can provide a definition for this term inasmuch as our legislature has not itself seen fit to define it. A statute cannot be enforced where its meaning cannot be determined by any known rules of construction, and the Appellant's conviction under Art. 30.02(d)(3), Tex. Penal Code Ann., should be reversed and the above-described statute held void for vagueness and the prosecution dismissed. Wilson v. State, 59 S.W.2d 399 (Tex. Crim.App. 1933).

CONCLUSION

The questions presented by this appeal are substantial and require plenary consideration by the court for their resolution.

Respectfully submitted,



S. Price Smith, Jr.
State Bar No. 18753500
210 Executive Building
Wichita Falls, Texas 76301
(817) 766-1700

Attorney for Appellant